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10/614,074

07/07/2003

Ronald R. Bartman

1005 - U.S.

6371

7590  
James G. Staples  
586 Ingleside Park  
Evanston, IL 60201

12/10/2008

EXAMINER

SPAHN, GAY

ART UNIT

PAPER NUMBER

3635

MAIL DATE

DELIVERY MODE

12/10/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Notice of Non-Compliant Amendment (37 CFR 1.121)

Application No.

10/614,074

Examiner

Gay Ann Spahn

Applicant(s)

BARTMAN ET AL.

Art Unit

3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

The amendment document filed on 08 September 2008 is considered non-compliant because it has failed to meet the requirements of 37 CFR 1.121 or 1.4. In order for the amendment document to be compliant, correction of the following item(s) is required.

THE FOLLOWING MARKED (X) ITEM(S) CAUSE THE AMENDMENT DOCUMENT TO BE NON-COMPLIANT:

- ☒ 1. Amendments to the specification:
  - ☐ A. Amended paragraph(s) do not include markings.
  - ☐ B. New paragraph(s) should not be underlined.
  - ☒ C. Other See Continuation Sheet.
- ☒ 2. Abstract:
  - ☐ A. Not presented on a separate sheet. 37 CFR 1.72.
  - ☒ B. Other See Continuation Sheet.
- ☒ 3. Amendments to the drawings:
  - ☐ A. The drawings are not properly identified in the top margin as "Replacement Sheet," "New Sheet," or "Annotated Sheet" as required by 37 CFR 1.121(d).
  - ☐ B. The practice of submitting proposed drawing correction has been eliminated. Replacement drawings showing amended figures, without markings, in compliance with 37 CFR 1.84 are required.
  - ☒ C. Other See Continuation Sheet.
- ☒ 4. Amendments to the claims:
  - ☐ A. A complete listing of all of the claims is not present.
  - ☐ B. The listing of claims does not include the text of all pending claims (including withdrawn claims)
  - ☒ C. Each claim has not been provided with the proper status identifier, and as such, the individual status of each claim cannot be identified. Note: the status of every claim must be indicated after its claim number by using one of the following status identifiers: (Original), (Currently amended), (Canceled), (Previously presented), (New), (Not entered), (Withdrawn) and (Withdrawn-currently amended).
  - ☐ D. The claims of this amendment paper have not been presented in ascending numerical order.
  - ☒ E. Other: See Continuation Sheet.
- ☐ 5. Other (e.g., the amendment is unsigned or not signed in accordance with 37 CFR 1.4):  
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For further explanation of the amendment format required by 37 CFR 1.121, see MPEP § 714.

## TIME PERIODS FOR FILING A REPLY TO THIS NOTICE:

1. Applicant is given **no new time period** if the non-compliant amendment is an after-final amendment or an amendment filed after allowance. If applicant wishes to resubmit the non-compliant after-final amendment with corrections, the **entire corrected amendment** must be resubmitted.
2. Applicant is given **one month**, or thirty (30) days, whichever is longer, from the mail date of this notice to supply the correction, if the non-compliant amendment is one of the following: a preliminary amendment, a non-final amendment (including a submission for a request for continued examination (RCE) under 37 CFR 1.114), a supplemental amendment filed within a suspension period under 37 CFR 1.103(a) or (c), and an amendment filed in response to a *Quayle* action. If any of above boxes 1. to 4. are checked, the correction required is only the **corrected section** of the non-compliant amendment in compliance with 37 CFR 1.121.

**Extensions of time** are available under 37 CFR 1.136(a) only if the non-compliant amendment is a non-final amendment or an amendment filed in response to a *Quayle* action.

**Failure to timely respond** to this notice will result in:

**Abandonment** of the application if the non-compliant amendment is a non-final amendment or an amendment filed in response to a *Quayle* action; or

**Non-entry** of the amendment if the non-compliant amendment is a preliminary amendment or supplemental amendment.

Continuation of 1(c) Other: The amendments to paragraph nos. [21], [24], [27], [29], and [30] are confusing because it is not understood why Applicant has interrupted the paragraphs in the middle thereof and then, continued the paragraphs on the next page. This could create confusion during the printing process should the application go to issue. Therefore, in order to be compliant, Applicant must resubmit the entire "Amendment to the Specification" section and the amendments to paragraph nos.[21], [24], [27], [29], and [30] should not stop in the middle of the paragraph and then continue on another sheet, but should flow like a normal paragraph.

In addition, the examiner notes that the Title of the Invention is considered to be a paragraph for amendment purposes and therefore, if Applicant is amending the title of the invention, it must be amended by underlining the text added and striking-through the text deleted, except that five or fewer consecutive characters can be deleted by placing double brackets therearound. Simply requesting that the title of the invention be replaced with a new title does not comply with 37 CFR 1.121(b).

Continuation of 2(b) Other: The Abstract has not been amended in compliance with 37 CFR 1.121(b)(1)(ii) in that it does not show the markings to the paragraph so that the Examiner can easily discern the changes made thereto. The Manual of Patent Examining Procedure (MPEP) section 608.01(b) states that "the abstract of the disclosure has been interpreted to be a part of the specification for the purposes of compliance with paragraph 1 of 35 U.S.C. 112 (In re Armbruster, 512 F.2d 676, 678-9, 185 USPQ 152, 154 (CCPA 1975))" and therefore, the examiner needs to know what changes Applicant has made to the Abstract in order to make sure that no new matter has been added. It is not showing the examiner the changes that have been made to the Abstract by simply instructing to replace the original Abstract with a new Abstract as was done in the Amendment filed 19 February 2008. Therefore, in order to comply with 37 CFR 1.121(b)(1)(ii), Applicants must amend the Abstract by underlining those words that have been added to the Abstract and striking through those words that have been deleted from the Abstract, except that deletion of five or fewer characters may be shown by double bracketing.

Continuation of 3(c) Other: According to the last sentence of 37 CFR 1.121(d), Applicant must explain IN DETAIL all changes made to the drawings in either the "Amendment to the Drawings" section or the Remarks section. The Remarks section appears to state that Figs. 3 and 4 have been amended, but if Figs. 1 and 2 have not been amended, then either they should not be included on "Replacement Sheets" or there should be a clear statement the Figs. 1 and 2 have not been amended. The practice of explaining the changes to the drawings IN DETAIL is meant to replace the practice of submitting marked-up copies of the drawings so that the examiner can easily discern what changes have been made to the drawing figures.

Continuation of 4(e) Other: With respect to Box 4C above, the examiner notes that claim 23 appears to have the incorrect status identifier of "(Previously presented)" since the words "by wedging pressure" in line 7 are underlined which appears to indicate that the claim should have the status identifier of "(Currently amended)".

/Gay Ann Spahn/  
Gay Ann Spahn, Primary Examiner  
December 7, 2008